

REMARKS

By this amendment, claim 1 is revised to place this application in immediate condition for allowance. Currently, claims 1-15, and 17-21 are before the Examiner for consideration on their merits.

In review, claim 1 is revised to better define the spherical and non-spherical segments with language derived from paragraphs [0037] and [0049] of the specification. Thus, claim 1 now defines the wedge shaped recesses 32 on one side of the lens and the other side having concentric convex segments and that the wedge shaped recesses are located on the lens facing the macula.

The question for resolution is whether Large teaches or suggests the device as now claimed. Applicants submit that Large does not teach the specific features of claim 1, as amended, and a *prima facie* case of anticipation cannot be said to be present. Moreover, there is no reason to further modify Large and allege that the invention is obvious under 35 U.S.C. § 103(a).

The amendment to claim 1 makes it clear that the claimed segments do not have the shape of single points of the lens's surface but cover each a whole area of it. Moreover, by this wording the segments yet can't have the shape of a single point because a single point does not have a two dimensional enlargement and thus can't be a physically existing convex structure (matching the fact that a point is a non-spherical structure, as stated by the examiner).

Even if Large's Fig. 3 might be interpreted as disclosing a superposition of spherical and non-spherical segments, Large do not disclose several concentric convex segments in Fig. 3. Particularly, Large does not disclose that the one side of the lens device is having such a structure *while at the same time* the other side of the lens features wedge-shaped recesses. Since

Large lacks the combined concentric convex segments and wedge shaped recesses, anticipation cannot exist and the rejection must be withdrawn in this regard.

Applicants also wish to contest the stance made on page 5 of the Office Action that Large would disclose a lens where one side has several wedge-shaped recesses and the other side has Fresnel lenses (10).

Applicants do not dispute that the cited birefringent lens (10) can be – as disclosed in column 2, lines 55-59 of Large – a Fresnel lens. But this lens (10) is only shown, described and cited together with the embodiment of Fig. 2. However, the lens (10) of Fig. 2 does not have wedge-shaped recesses.

Instead, wedge-shaped recesses are contained only in the embodiments shown in Fig. 3 and 4 of Large. But in those embodiments the diffractive lens (21) is obviously different from the diffractive lens (10) of Fig. 2. According to column 3, line 59 to column 4, line 3, of Large, the diffractive structure of lens (21) is formed by annular steps (22). Since those annular steps (22) do affect the refractive behaviour of the lens, they might be regarded as parts of a Fresnel lens. Also they might be regarded as wedge-shaped recesses. In any event, Large teaches these embodiments in the alternative; the lens is either a Fresnel lens *or* the other with the wedge shaped recesses. Especially, if they are regarded as parts of the Fresnel lens then the lens does not have wedge-shaped recesses. If they are regarded as wedge-shaped recesses, the lens doesn't have parts of a Fresnel lens. Therefore, Fig. 3 of Large cannot be interpreted to have all of the features of claim 1, i.e., the wedge shaped recesses and the concentric convex segments, because the claim requires both features to be present and this duality is not taught in Large.

Even if the Examiner were to still take the position that the annular steps (22) of Large can be nevertheless both – parts of a Fresnel lens and wedge-shaped recesses – Fig. 3 still fails to

anticipate the invention. This is due to the fact that claim 1 requires that the parts of the Fresnel lens are formed at the one side of the lens while at the same time the wedge-shaped recesses are formed on the other side of the lens. This is not possible if the parts of the Fresnel lens and the wedge-shaped recesses are the same feature as would be the case in the hypothetical position described above and a case of anticipation cannot exist for this reason.

The limitation regarding the macula is also important in assessing patentability. Despite the structure of the outer side of the lens device and the question whether Large discloses parts of a Fresnel lens and wedge-shaped recesses or not, this feature is an important difference to the disclosure of Large. It can be easily recognized that in Large, the annular steps (22) that are regarded as the claimed wedge-shaped recesses are oriented always in the opposite way. Particularly they are either located at the inner side of the lens (Fig. 3) or yet on the outer surface of it (Fig. 4). Hence, they are never facing the macula.

It should be also noted, that for Large, it is yet not possible for the wedge-shaped recesses to face the macula, because in Large, the side facing the macula has to be in direct contact with the eye's surface. If there would be wedge-shaped recesses, either the lens would drop out of the eye or the recesses were not able to fulfil their function properly because they would be deformed.

In light of the above, claim 1 is not anticipated by Large. Moreover, there is no legitimate reason to modify Large and arrive at the invention without resort to Applicants' own invention as a teaching template. This means that a rejection based on 35 U.S.C. § 103(a) could only be based on hindsight and it would not be sustainable on appeal.

Since claim 1 is deemed to be patentable over Large, its dependent claims are also in condition for allowance.

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Accordingly, the Examiner is requested to examine this application and pass all pending claims onto issuance.

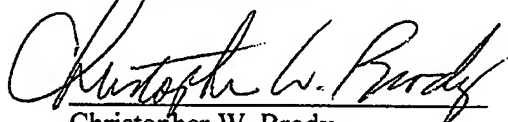
If the Examiner believes that an interview would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1753.

The above constitutes a complete response to all issues raised in the Office Action dated February 2, 2009.

Again, reconsideration and allowance of this application is respectfully requested.

Applicants respectfully submit that there is no fee required for this submission, however, please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
CLARK & BRODY

A handwritten signature in cursive script, appearing to read "Christopher W. Brody", written over a horizontal line.

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